

AMENDMENTS TO LB1098

(Amendments to Standing Committee amendments, AM2594)

Introduced by Carlson

1 1. Strike sections 3 to 6 and insert the following new
2 sections:

3 Sec. 3. (1) The Legislature finds that water use is
4 sustainable when current use promotes healthy watersheds, improves
5 water quality, and protects the ability of future generations to
6 meet their needs.

7 (2) The goals of the Water Sustainability Fund are
8 to: (a) Provide financial assistance to programs, projects,
9 and activities that increase aquifer recharge, reduce aquifer
10 depletion, and increase stream flow; (b) remediate or mitigate
11 threats to drinking water; (c) promote the goals and objectives
12 of approved integrated management plans or ground water management
13 plans; (d) contribute to multiple water supply management goals
14 including flood control, reducing threats to property damage,
15 agricultural uses, municipal and industrial uses, recreational
16 benefits, wildlife habitat, conservation, and preservation
17 of water resources; (e) assist municipalities with the cost
18 of constructing, upgrading, developing, and replacing sewer
19 infrastructure facilities as part of a combined sewer overflow
20 project; (f) provide increased water productivity and enhance water
21 quality; (g) use the most cost-effective solutions available; and
22 (h) comply with interstate compacts, decrees, other state contracts

1 and agreements and federal law.

2 (3) The Legislature finds that the goals of the Water
3 Sustainability Fund can be met by equally considering programs,
4 projects or activities in the following categories: (a) Research,
5 data, and modeling; (b) rehabilitation or restoration of water
6 supply infrastructure, new water supply infrastructure, or
7 water supply infrastructure maintenance or flood prevention for
8 protection of critical infrastructure; (c) conjunctive management,
9 storage, and integrated management of ground water and surface
10 water; and (d) compliance with interstate compacts or agreements or
11 other formal state contracts or agreements or federal law.

12 Sec. 4. (1) It is the intent of the Legislature that the
13 Water Sustainability Fund be equitably distributed statewide to the
14 greatest extent possible for the long term.

15 (2) Distributions to assist municipalities with the
16 cost of constructing, upgrading, developing, and replacing sewer
17 infrastructure facilities as part of a combined sewer overflow
18 project shall be based on a demonstration of need and shall
19 equal ten percent of the total annual appropriation to the
20 Water Sustainability Fund if (a) applicants have applied for
21 such funding as required under section 6 of this act and (b) any
22 such application has been recommended for further consideration
23 by the director and is subsequently approved for allocation by
24 the commission pursuant to subsection (1) of section 8. If more
25 than one municipality demonstrates a need for funds pursuant to
26 this subsection, funds shall be distributed proportionally based on
27 population.

1 (3) Any money in the Water Sustainability Fund may
2 be allocated by the commission to applicants in accordance with
3 sections 3 to 10 of this act. Such money may be allocated in the
4 form of grants or loans for water sustainability programs, projects
5 or activities undertaken within the state. The allocation of funds
6 to a program, project or activity in one form shall not of itself
7 preclude additional allocations in the same or any other form to
8 the same program, project or activity.

9 (4) A natural resources district is eligible for funding
10 from the Water Sustainability Fund only if the district has adopted
11 or is currently participating in the development of an integrated
12 management plan pursuant to subdivision (1)(a) or (b) or section
13 46-715.

14 (5) The commission shall utilize the resources and
15 expertise of, and collaborate with the Department of Natural
16 Resources, the University of Nebraska, the Department of
17 Environmental Quality, the Nebraska Environmental Trust Board, and
18 the Game and Parks Commission on funding and planning for water
19 projects, programs, or activities.

20 (6) A biennial report shall be made to the Clerk of
21 the Legislature describing the work accomplished by the use of
22 funds towards the goals of the Water Sustainability Fund beginning
23 on December 31, 2015. The report submitted to the Clerk of the
24 Legislature shall be submitted electronically.

25 Sec. 5. The commission shall rank and score applications
26 for funding based on criteria that demonstrates the extent to which
27 a program, project, or activity:

- 1 (1) Remediates or mitigates threats to drinking water;
- 2 (2) Meets the goals and objectives of an approved
3 integrated management plan or ground water management plan;
- 4 (3) Contributes to water sustainability goals by
5 increasing aquifer recharge, reducing aquifer depletion, or
6 increasing streamflow;
- 7 (4) Contributes to multiple water supply management
8 goals, including, but not limited to, flood control, agricultural
9 use, municipal and industrial uses, recreational benefits, wildlife
10 habitat, conservation of water resources, and preservation of water
11 resources;
- 12 (5) Maximizes the beneficial use of Nebraska's water
13 resources for the benefit of the state's residents;
- 14 (6) Is cost-effective;
- 15 (7) Helps the state meet its obligations under interstate
16 compacts, decrees, or other state contracts or agreements or
17 federal law;
- 18 (8) Reduces threats to property damage or protects
19 critical infrastructure that consists of the physical assets,
20 systems, and networks vital to the state or the United States
21 such that their incapacitation would have a debilitating effect on
22 public security or public health and safety;
- 23 (9) Improves water quality;
- 24 (10) Has utilized all available funding resources of the
25 local jurisdiction to support the program, project or activity;
- 26 (11) Has a local jurisdiction with plans in place that
27 support sustainable water use;

1 (12) Addresses a statewide problem or issue;

2 (13) Contributes to the state's ability to leverage state
3 dollars with local or federal government partners or other partners
4 to maximize the use of its resources;

5 (14) Contributes to watershed health and function; and

6 (15) Uses objectives described in the annual report and
7 plan of work for the state water planning and review process issued
8 by the department.

9 Sec. 6. (1) Any entity qualified pursuant to subsection
10 (3) of section 4 of this act to apply for and receive funds from
11 the Water Sustainability Fund may file an application with the
12 department for a grant or loan from such fund. Applications for
13 grants to the department itself shall be filed by the department.
14 Each application shall be filed in such manner and form and
15 be accompanied by such information as may be prescribed by the
16 director and the commission.

17 (2) Any such application shall:

18 (a) Describe the nature and purpose of the proposed
19 program, project or activity;

20 (b) Set forth or be accompanied by a plan for
21 development of the proposed program, project, or activity,
22 together with engineering, economic, and financial feasibility
23 data and information, and such estimated costs of construction
24 or implementation as may be required by the director and the
25 commission;

26 (c) State whether money other than that for which the
27 application is made will be used to help in meeting program,

1 project or activity costs and whether such money is available or
2 has been sought for this purpose;

3 (d) When appropriate, state that the applicant holds or
4 can acquire title to all lands or has the necessary easements and
5 rights-of-way for the project and related lands and has or may
6 acquire all water rights necessary for the proposed project;

7 (e) Show that the applicant possesses all necessary
8 authority to undertake or participate in the proposed program,
9 project or activity; and

10 (f) Demonstrate the probable environmental and ecological
11 consequences that may result from such proposed program, project or
12 activity.

13 (3) Upon receipt of an application, the director shall
14 evaluate and investigate all aspects of the proposed program,
15 project or activity and the proposed schedule for development
16 and completion of such program, project, or activity, determine
17 eligibility for funding, and make appropriate recommendations to
18 the commission pursuant to sections 3 to 8 of this act. As a part
19 of his or her investigation, the director shall consider whether
20 the plan for development of the program, project or activity
21 is satisfactory. If the director determines that the plan is
22 unsatisfactory or that the application does not contain adequate
23 information upon which to make determinations, the director shall
24 return the application to the applicant and may make such
25 recommendations to the applicant as are considered necessary to
26 make the plan or the application satisfactory.

27 (4) Requests for utilization of the Water Sustainability

1 Fund for state participation in any water and related land-water
2 resources projects shall also be filed with the department for
3 the director's evaluation, investigation, and recommendations. Such
4 requests shall be filed in the manner and form and be accompanied
5 by such information as shall be prescribed by the department and
6 the commission.

7 Sec. 7. (1) Each program, project, or activity for which
8 funding is requested, whether such request has as its origin
9 an application or the action of the department itself, shall be
10 reviewed as provided in sections 3 to 10 of this act by the
11 director prior to the approval of any allocation for such program,
12 project or activity by the commission.

13 (2) The director may recommend approval of and the
14 commission may approve grants or loans, including the appropriate
15 repayment period and the rate of interest, for program, project,
16 or activity costs or acquisition of interests in projects if after
17 investigation and evaluation the director finds that:

18 (a) The plan does not conflict with any existing Nebraska
19 state land plan;

20 (b) The proposed program, project or activity is
21 economically and financially feasible based upon standards adopted
22 by the commission pursuant to sections 3 to 10 of this act;

23 (c) The plan for development of the proposed program,
24 project or activity is satisfactory;

25 (d) The plan of development minimizes any adverse impacts
26 on the natural environment;

27 (e) The applicant is qualified, responsible, and legally

1 capable of carrying out the program, project or activity;

2 (f) In the case of a loan, the borrower has demonstrated
3 the ability to repay the loan and there is assurance of adequate
4 operation, maintenance, and replacement during the repayment life
5 of the project;

6 (g) The plan considers other plans and programs of the
7 state and resources development plans of the political subdivisions
8 of the state; and

9 (h) The money required from the Water Sustainability Fund
10 is available.

11 (3) The director and staff of the department shall carry
12 out their powers and duties under sections 3 to 10 of this act
13 independently of and without prejudice to their powers and duties
14 under other provisions of law.

15 (4) No member of the commission shall be eligible
16 to participate in the action of the commission concerning an
17 application for funding to any entity in which such commission
18 member has any interest. The director may be delegated additional
19 responsibilities consistent with the purposes of sections 4 to 10.
20 It shall be the sole responsibility of the commission to determine
21 the priority in which funds are allocated for eligible programs,
22 projects, and activities under section 5 of this act.

23 Sec. 8. (1) The director shall make recommendations based
24 upon his or her review of the criteria set forth in section 7 of
25 this act of whether an application should be considered further or
26 rejected and the form of allocation he or she deems appropriate.
27 The commission shall act in accordance with such recommendations

1 according to the application procedures adopted and promulgated in
2 rules and regulations.

3 (2) If, after review of the recommendation by the
4 director, the commission determines that an application for a
5 grant, loan, acquisition of an interest, or combination thereof
6 pursuant to sections 3 to 10 of this act is satisfactory and
7 qualified to be approved, before the final approval of such
8 application may be given and the funds allocated, the department
9 shall enter into an agreement in the name of the state with the
10 applicant agency or organization and with any other organizations
11 it deems to be involved in the program, project or activity to
12 which funds shall be applied. The department shall also enter into
13 such agreements as are appropriate before allocation of any funds
14 for the acquisition of interest in any qualified project when
15 such acquisition is initiated by the department itself pursuant to
16 section 9 of this act. All agreements entered into pursuant to
17 this section shall include, but not be limited to, a specification
18 of the amount of funds involved, whether the funds are considered
19 as a grant, loan, or for the acquisition of an interest in the
20 name of the state, and, if a combination of these is involved, the
21 amount of funds allocated to each category, the specific purpose
22 for which the allocation is made, the terms of administration of
23 the allocated funds, and any penalties to be imposed upon the
24 applicant organization should it fail to apply or repay the funds
25 in accordance with the agreement.

26 (3) If the allocation to be approved is a loan, the
27 department and the applicant or applicants shall include in the

1 agreement provisions for repayment to the Water Sustainability Fund
2 of money loaned together with any interest at reasonable rates as
3 established by the commission. The agreement shall further provide
4 that repayment of the loan together with any interest thereon shall
5 commence no later than one full year after construction of the
6 project is completed and that repayment shall be completed within
7 the time period specified by the commission. The repayment period
8 shall not exceed fifty years, except that the commission may extend
9 the time for making repayment in the event of extreme emergency
10 or hardship. Such agreement shall also provide for such assurances
11 of and security for repayment of the loan as shall be considered
12 necessary by the department.

13 (4) With the express approval of the commission, an
14 applicant may convey its interest in a project to a successor. The
15 department shall contract with the qualified successor in interest
16 of the original obligor for repayment of the loan together with any
17 interest thereon and for succession to its rights and obligations
18 in any contract with the department.

19 (5) The state shall have a lien upon a project
20 constructed, improved, or renovated with money from the Water
21 Sustainability Fund for the amount of the loan together with any
22 interest thereon. This lien shall attach to all project facilities,
23 equipment, easements, real property, and property of any kind or
24 nature in which the loan recipient has an interest and which is
25 associated with the project. The department shall file a statement
26 of the lien, its amount, terms, and a description of the project
27 with the county register of deeds of each county in which the

1 project or any part thereof is located. The county register of
2 deeds shall record the lien and it shall be indexed as other liens
3 are required by law to be indexed. The lien shall be valid until
4 paid in full or otherwise discharged. The lien shall be foreclosed
5 in accordance with applicable state law governing foreclosure of
6 mortgages and liens. Any lien provided for by this section may
7 be subordinate to that which secures federal assistance or other
8 secured assistance received on the same project.

9 Sec. 9. In order to develop Nebraska's water resources,
10 the department, using the process provided for in subsection (4)
11 of section 6 of this act, and with the approval of the commission,
12 may acquire interests in water and related land resources projects
13 in the name of the state utilizing the Water Sustainability Fund.
14 Such use of the fund shall be made when the public benefits
15 obtained from the project or a part thereof are statewide in nature
16 and when associated costs are determined to be more appropriately
17 financed by other than a local organization. Such use of the
18 fund may be made upon the determination by the department and
19 the commission that such acquisition is appropriate under sections
20 3 to 10 of this act. The department, with the approval of the
21 commission, may also acquire interests in water resource projects
22 in the name of the state to meet future demands for usable
23 water. Such resource projects may include, but not be limited to,
24 the construction of dams and reservoirs to provide surplus water
25 storage capacity for municipal and industrial water demands and for
26 other projects to assure an adequate quantity of usable water. In
27 furtherance of these goals the department may contract with the

1 federal government or any of its agencies or departments for the
2 inclusion of additional water supply storage space behind existing
3 or proposed structures.

4 Sec. 10. The Appropriations Committee of the Legislature
5 shall, beginning with the FY2019-21 biennial budget review process,
6 conduct a biennial analysis of the financial status of the Water
7 Sustainability Fund, including a review of the committed and
8 uncommitted balance of the fund and the financial impact of pending
9 projects. The committee shall base its recommendation for transfers
10 to the Water Sustainability Fund upon information provided in the
11 review process.

12 2. On page 2, line 20, strike "and" and show as stricken;
13 and in line 22 after "Resources" insert "; and

14 (13) Combined sewer overflow project means a municipal
15 project to reduce overflows from a combined sewer system pursuant
16 to a long-term control plan approved by the Department of
17 Environmental Quality".

18 3. On page 6, line 15, after "areas" insert ", and
19 represent, to the extent possible, the racial and ethnic diversity
20 of the state"; and strike lines 16 through 23 and insert

21 "(6) After the members have been appointed as required
22 under this section, the commission shall revise or adopt and
23 promulgate rules and regulations as necessary to administer the
24 Water Sustainability Fund pursuant to sections 3 to 10 of this
25 act."

26 4. Renumber the remaining sections and correct the
27 repealer accordingly.